# STATE OF MICHIGAN

# COURT OF APPEALS

In the Matter of SARAH ROSS, JACOB FULTON, JORDAN FULTON and TYLER FULTON, Minors.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

AMBER ROSS,

Respondent-Appellant,

and

TROY FULTON,

Respondent.

UNPUBLISHED
July 10, 2008

No. 282514
Clinton Circuit Court
Family Division
LC No. 05-017968-NA

Before: Gleicher, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Respondent mother appeals as of right from a circuit court order terminating her parental rights under MCL 712A.19b(3)(c)(i) [the conditions leading to the adjudication continue to exist with no reasonable likelihood of rectification within a reasonable time given the children's ages], (g) [irrespective of intent, the parent fails to provide proper care and custody and no reasonable likelihood exists that she might do so within a reasonable time given the children's ages], and (j) [a reasonable likelihood exists, based on the parent's conduct or capacity, that the children will suffer harm if returned to the parent's home].[1] We reverse and remand.

[1] The circuit court also terminated the parental rights of the father, Troy Fulton, who is not a party to this appeal.

## I. Basic Facts & Underlying Procedure

The circuit court exercised jurisdiction over the four involved minor children in June 2005, on the basis of respondent's admissions to several allegations contained in a May 2005 petition filed by the Department of Human Services (DHS). Specifically, respondent conceded that she had a history of abusing alcohol and marijuana, which the children's father supplied to her; she experienced depression; in May 2005, Families First had attempted unsuccessfully to assist her and the father in parenting the children; she had not adhered to the requirements of a free transitional housing program because she sometimes lived with the father; and Jacob and Jordan exhibited developmental delays, including serious speech problems.

By June 2005, the circuit court had ordered that the children reside in a temporary placement with relatives, and that respondent (1) undergo a psychological evaluation and a substance abuse assessment, and pursue all recommended treatments; (2) submit random drug screens; (3) complete parenting classes; (4) maintain suitable housing; (5) have legal employment at a minimum part-time; and (6) attend scheduled parenting times.

More than two years elapsed before the termination hearings. During this period, respondent progressed sufficiently to earn the return of Sarah and Jordan to her home in July 2006. The two youngest children, who lived in a different foster care placement than Sarah and Jordan, also had a couple of unsupervised visits with respondent and their siblings. The DHS removed Sarah and Jordan several months later, however, after one of respondent's drug screens tested positive for opiates.[2]

In mid-April 2007, Sarah and Jordan returned to respondent's custody for unsupervised weekend parenting time. But because DHS personnel subsequently learned of a fight that occurred that weekend between respondent and her significant other, the DHS opted not to pursue further reunification efforts. In July 2007, the DHS filed a supplemental petition seeking termination of respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (g) and (j). After a four-day termination hearing, the circuit court found clear and convincing evidence to support all three asserted grounds, and that termination served the best interests of the children, who had spent more than two years in foster care.

## II. Standard of Review

Respondent challenges the sufficiency of the evidence supporting the statutory grounds for termination invoked by the circuit court. We review for clear error a circuit court's decision to terminate parental rights. MCR 3.977(J). The clear error standard controls our review of

[2] Respondent contends in her brief on appeal that the circuit court erred by removing Sarah and Jordan from her home midway through the pendency of the case. Although respondent sought to appeal the removal order by seeking leave from this Court, which was denied, the order remains a nonfinal order. We decline to specifically consider the order of removal because we have a final order from which respondent has appealed by right. MCR 7.203.

"both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest." *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). A decision qualifies as clearly erroneous when, "although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been made." *In re JK*, 468 Mich 202, 209-210; 661 NW2d 216 (2003). Clear error signifies a decision that strikes us as more than just maybe or probably wrong. *In re Trejo*, *supra* at 357.

## III. Analysis of Statutory Bases for Termination

We first consider respondent's contention that the circuit court erroneously relied on subsection (c)(i). The conditions leading to the plea-based adjudication in this case constituted the following: (1) respondent's history of abusing alcohol and marijuana, (2) the dysfunctional nature of the relationship between respondent and the children's father, which included concerns about domestic violence by the father in the form of emotional abuse, (3) respondent's inability to care for and properly supervise all four of her children, and (4) educational neglect, as reflected by Jordan's and Jacob's speech delays.[3]

Our review of the evidence offered in support of termination of parental rights under subsection (c)(i) is guided by two uncontestable legal principles. First, the proof supporting a court's termination decision must qualify at least as clear and convincing. *Santosky v Kramer*, 455 US 745, 768-770; 102 S Ct 1388; 71 L Ed 2d 599 (1982). The clear and convincing evidence standard is "the most demanding standard applied in civil cases." *In re Martin*, 450 Mich 204, 227; 538 NW2d 399 (1995). Our Supreme Court has described clear and convincing evidence as proof that

> produce(s) in the mind of the trier of fact a firm belief or conviction as to the truth of the allegations sought to be established, evidence so clear, direct and weighty and convincing as to enable (the factfinder) to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue. [*Id*. (internal quotation omitted).]

Second, we have endeavored to apply the clear and convincing standard to the statutory language, which permits a court to terminate parental rights under subsection (c)(i) only if "[t]he conditions that led to the adjudication continue to exist" without reasonable likelihood of rectification. Our careful review of the entire, voluminous record in this case leads us to conclude that the circuit court clearly erred in finding clear and convincing evidence that the conditions leading to the adjudication continued to exist at the time of the termination hearing.

### A. Substance Abuse as a Basis for Subsection (c)(i)

With respect to respondent's substance abuse history, over the course of these lengthy proceedings respondent attended all required drug screens, which occurred three times a week

[3] The May 2005 petition additionally averred that respondent neglected to become involved in Sarah's education, but respondent denied this allegation.

for the majority of the proceedings. Respondent provided well in excess of 300 drug screens, which yielded only two positive test results. In March 2006, respondent used cocaine, in the midst of her participation in group and individual substance abuse therapy, but she thereafter graduated from the program in June 2006. In September 2006, respondent tested positive for opiates,[4] but successfully completed a second round of substance abuse treatment in March 2007.

[4] Evidence at the termination hearing, including dental records and the consistent testimony of several witnesses, established that the September 2006 opiate test arose from an occasion when respondent had pain from an abscessed or broken tooth, and took an unidentified pill supplied by her grandmother to reduce the pain. Joanne Giordano, an expert in clinical social work who began counseling respondent in October 2005, and who learned from respondent of the positive opiate result in September 2006, denied that she ever observed respondent exhibit any signs that she "was using any street drugs." Katie Bozek, a counselor in the Families in Transition (FIT) program at Michigan State University, who had weekly sessions with respondent beginning on January 11, 2006, described her efforts in mid-September 2006 to help respondent locate a dentist who would accept her Medicaid insurance; when questioned, "Did you believe that that incident was a recreational use of drugs[,]" Bozek replied, "No, not at all." Dr. Kathleen Jager, director of the FIT program and one of respondent's weekly therapists beginning in July 2006, testified that in light of her previous experience in substance abuse counseling, she disbelieved that respondent's positive opiate test suggested that she had begun abusing substances again:

> *Q*: And, did you observe anything prior to being informed of that positive drop that would have led you to believe that [respondent] was using substances again?
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> *Dr. Jager*: No, I didn't. And, in fact, the more I learned about that positive drop, the more I really felt like—or really thought that it had to do with her—her teeth issue, her dental issues. She was in a—a significant amount of pain, um, when she took that opiate. And, I mean, she showed me her teeth. I saw the reports from the dentist. I think anybody who had the broken teeth that she would have had, um, would have had a lot of pain. I mean, I saw her teeth broken off. And, I know that when she went down to get them fixed at . . . University of Michigan Dental Clinic, they had offered her . . . a prescription for a narcotic, and she turned them down.
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> * * *
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> *Q*: Do you believe that that positive drug test for opiates was a result of recreational drug use?
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> *Dr. Jager*: No, I do not.

Substance abuse therapist Smith, who owned and operated the substance abuse clinic respondent twice attended, similarly denied that respondent's lone positive opiate test "would . . . indicate someone who is addicted to a . . . street opiate." Nowhere does the expansive record contain any evidence giving rise to the notion that respondent resorted to unlawful "street drugs" at any point after the March 2006 positive drug screen for cocaine.

(continued…)

Sheila Smith, a licensed substance abuse counselor, summarized at the termination hearing that when respondent completed the first round of therapy in June 2006, Smith still had concerns about respondent's recovery because her "periods of stability . . . didn't last long enough to really build a strong solid foundation, a base at that time." Smith testified, however, that respondent approached the second round of treatment "more seriously," that Smith did not have as many concerns about respondent after her completion of the treatment program the second time because Smith felt like respondent "gained . . . maturity and was more stable," and,

> That [respondent's foundation] was better, she was—and I wasn't going just by what she was reporting, the women in the group were seeing her at meetings, she was talking about some real issues at the table, she was in contact with her sponsor, she was doing step work that would, you know, give her the tools to cope with any—any issue. Life areas were more manageable, not as chaotic, which is something else that tells us that they're more focused in doing what they need to do and not what they want.

When posed with the inquiry whether Smith believed respondent "got what she needed from your agency to be able to remain clean and sober . . . if she makes that decision in her own mind that she is going to remain sober," Smith responded, "I absolutely believe that or I wouldn't have completed her."

Another potential substance abuse concern substantiated by the record involved respondent's submission of approximately a week's worth of falsified Alcoholics Anonymous (AA) meeting attendance forms in the midst of her first round of substance abuse treatment, which respondent acknowledged. At the termination hearing, respondent averred that at that point she had begun to feel "very overwhelmed and . . . missed a week [of meetings], and . . . I didn't want to get in trouble for not going, so I just thought I would sign it myself; and that was a very stupid thing to do, and I really regret doing that. I just wasn't thinking right." After the brief break in appropriately documented AA attendance in early 2006, the only other irregularity in respondent's AA documentation consisted of caseworker Christine Sayers's concern that, due to a delay, she did not receive respondent's AA attendance forms for the period between June 19, 2006 and August 1, 2006, until a combined dispositional review and show cause hearing on October 5, 2006. Respondent testified that she had temporarily misplaced some of the sheets. According to Sayers, she could not verify "seven out of the eight numbers . . . provided on those AA slips" because "[o]ne I believe was a number to a hotel, another was a store of some sort . . . ." Respondent insisted, however, that she had attended all the June 2006 and July 2006

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(…continued)

In 2004, a doctor prescribed respondent Ultram, "a synthetic opiod," to control or diminish scoliosis-related back pain. Respondent acknowledged in her testimony that during her intense tooth pain, she telephoned her doctor's office and inquired "if I could take an extra one or two, and they said it was okay because of my tooth; and yes . . . I did take a couple of extra." Smith testified that during subsequent therapy sessions with respondent, she urged respondent to simply abandon the Ultram prescription, which respondent agreed to do. Petitioner has not presented any evidence that the Ultram prescription remains a potential problem for respondent.

meetings, that these attendance sheets were legitimate, and that she and her counsel "actually called those numbers" and did not reach a hotel or store.[5]

Even assuming the inaccuracy of several signatures on some summer 2006 AA attendance forms, the record does not *clearly and convincingly* establish that substance abuse concerns remained at the time of the October 2007 termination hearing, especially given that (1) apart from the well-documented resort to a pain pill in a dental emergency, only one instance of illegal drug use occurred in the course of more than 300 consistent drug screens, (2) Smith testified regarding respondent's subsequent and successful completion of substance abuse treatment during her second involvement in the program; and (3) no evidence supported that by the time of the termination hearing, respondent remained habituated to drugs, used drugs regularly, or resorted to drug use in stressful situations. Respondent had no documented alcohol or marijuana use during 2006 and 2007, and consistently demonstrated her understanding of the need to refrain from using illegal substances.

B. Respondent's Personal Relationships as a Basis for Subsection (c)(i)

With respect to the interrelated concerns of respondent's involvement in a dysfunctional relationship potentially imbued with domestic violence, respondent undisputedly had concluded and resolved her lengthy relationship with the children's father, which dated back to his impregnation of respondent at age 13. The potentially worrisome relationship that existed at the time of the termination hearing involved respondent and Rachel Keyes, who had attended high school together.

Several counselors provided joint therapy and family therapy, as well as individual counseling, to respondent and Keyes. Giordano, whom the circuit court declared an expert "in the areas of both clinical social work and domestic violence," began individual counseling with respondent in October 2005, which not long thereafter expanded to include Keyes. Giordano recalled that she received a request to observe how respondent and Keyes "worked in their relationship together." Giordano summarized some of her observations of respondent and Keyes as follows:

> *Q*: Now you testified that it's common for someone who has been in an abusive relationship to return to that partner . . . not return to that same partner but find a partner that has similar characteristics and then become involved in the same type of relationship with a new person?
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> * * *

[5] During the first year of these proceedings, four different case workers assisted respondent and her family. Christine Sayers became involved in March 2006, and sought removal of the children after respondent's September 8, 2006 positive drug test for opiates. Sayers did not discuss removal of the children with their therapist or any other service providers before the show cause hearing. At the termination hearing, only Sayers urged the circuit court to terminate respondent's parental rights.

Did you see [respondent] doing that with Rachel [Keyes]?

> *Giordano*: I didn't see her doing that with Rachel. I felt that she had found Rachel as a nurturing partner and in some ways she was sort of the nurturing mother she never had. And I think that seemed to be the role that primarily Rachel was playing in their relationship. They did have some ability to—I know that Rachel's background also has some abuse in it and they both have some dynamics which we call survival skills where they both have viewed family of origin issues and how they resolved conflict and that both of their homes were used to . . . get loud with each other . . . –they would describe that would occur but they were conscious of it and did not want to repeat that pattern.

Giordano denied that she detected any signs Keyes controlled or otherwise abused respondent, and reported to the contrary that respondent "constantly stood up for herself with Rachel." Giordano believed that respondent "sometimes ha[d] difficulty . . . with caseworkers," "people she may not have had as much of a trusting relationship with," and consequently "would usually try to get Rachel to be her voice." After caseworkers expressed concern regarding respondent's confidence level, Giordano and respondent also addressed that issue in therapy. Giordano added, "I don't think [respondent] would reach out to somebody who . . . would be controlling of her or abusive towards her."

Dr. Marsha Carolan, a Families in Transition (FIT) counselor and family therapy expert, testified that between January 2006 and July 2006, she worked weekly with respondent and the children, and in separate weekly sessions with respondent and Keyes. Dr. Carolan denied that she ever witnessed any domestic violence "red flags" in respondent's relationship with Keyes, which she further described as follows:

> I saw Rachel as a very strong person, and she has a very strong personality, a stronger personality than [respondent], who has a kind of more quieter [sic] personality. But, there was never a time at which I felt there was anything coercive between them. [Respondent] was always able to speak her mind and say what she felt. She didn't display any kind of fear of Rachel . . . and, Rachel didn't show any—any evidence that I've seen in other domestic violence couples of controlling [respondent's] thoughts or actions, her behaviors.

Dr. Carolan also denied that any jealousy issues arose between respondent and Keyes. Bozek, who assisted in counseling both respondent and Keyes nearly throughout 2006 at FIT, likewise observed no jealousy or other indicia of domestic violence in the relationship between respondent and Keyes.

Dr. Kathleen Jager, director of the FIT program, testified that she saw respondent, Keyes and the children weekly from mid-July 2006 through October 2006, and thereafter, at the request of respondent and Keyes, continued to regularly provide them individual and couples therapy through a different MSU clinic or program, the family and child outpatient clinic. When pressed to opine regarding the nature of respondent's interactions with Keyes, Dr. Jager summarized as follows:

*Dr. Jager*: As a couple, I had observed about them that they—they did have some struggles as a couple. They were working on things. I observed them being very committed to working on things. . . . [S]ometimes communication would go, you know—I think, like in any couple, there are things that you fight about, there are times when you're not clear in your communication, there are times when people come home stressed out and it's you know—it . . . turns into something that it shouldn't. They both would voice their care and concern for each other. They were very affectionate at times, you know. And, there were times when they did have struggles. But, they both were very committed to the relationship and would voice that.

* * *

*Q*: Is the relationship between [respondent] and Rachel, if you had to categorize it, is it, overall, more positive than negative?

*Dr. Jager*: Overall, it's definitely more positive than negative. They have a balance of connectedness, flexibility, . . . they have some structure to their relationship, and they have an amount of flexibility. What they struggle with is how to balance . . . this piece of togetherness with being individuals and what that should look like, and many couples have that same problem.

*Q*: And, this is the first relationship that [respondent] has become involved in as an adult woman[.]

* * *

Does that play into that at all?

*Dr. Jager*: I would think it does.

Dr. Jager attributed "a very . . . large piece of the stress" in respondent's and Keyes's lives to the potential loss of the children. Although Dr. Jager had experience in looking for indicia of domestic violence, she repeatedly denied detecting any such signs in her interactions with respondent and Keyes. Dr. Jager additionally denied that any conflict issues between respondent and Keyes rose to the level of "pos[ing] . . . harm of abuse and neglect. I don't think it meets that standard."

Keyes also engaged in individual anger management counseling, which Sayers recommended after Keyes stalked out of a meeting between Sayers, Keyes and respondent. Amy Foster, a graduate student, counseled Keyes, under a licensed therapist's supervision, from January 9, 2007 through the time of the termination hearing in October 2007. Foster testified that over the course of 25 sessions, Keyes "very active[ly]" participated in sessions to address anger and impulsivity issues, like trigger signs, behavior escalation patterns, and solutions. Foster noted that Keyes was "rather open and just wanting to get the most that she can out of therapy and [wa]s willing to do . . . what's needed." According to Foster, Keyes acknowledged the impropriety of her prior impulsive behavior when frustrated with the court proceedings, which Foster viewed as a primary source of tension in Keyes's life. Foster believed that Keyes

had made progress, and added, "I think she's pretty good already in being able to . . . get through some of her frustrations. I think what she really grew from was kind of seeing it on paper and seeing how her frustrations might play out and how to work through it." Foster concluded that she observed nothing giving rise to any concern that Keyes controlled or dominated respondent.

The domestic violence concern stems primarily from one incident that occurred on a weekend in April 2007, and respondent's subsequent characterization of the event to Sayers. The essential details of the altercation do not appear in dispute. On the weekend of April 14, 2007, respondent had her first in-home, unsupervised visit with Sarah and Jordan since October 2006. Respondent and Keyes had envisioned a trip to a carnival for the children that weekend. Before they could make it there, however, Keyes received phone calls advising her of her grandmother's declining condition and ultimate death in a hospital. Before arriving at the hospital to drop off Keyes, 10-1/2-year-old Sarah, who had met Keyes's grandmother on a couple occasions, repeatedly inquired of respondent whether she also could go to the hospital to say goodbye, with which request respondent ultimately acquiesced. After stopping at the hospital and Keyes's aunt's house, respondent, Keyes and the children returned home for dinner, and respondent and Keyes put the children to bed. Respondent testified that although she did not know precisely how to comfort Keyes, she approached Keyes and proposed to offer solace through physical intimacy, which Keyes rejected. The testimony of Keyes and respondent essentially agreed that respondent became frustrated about Keyes's rejection of her and went to a separate bedroom, Keyes followed respondent to ascertain why respondent seemed upset, they pursued a brief argument with each other that included name calling, they "stupid[ly] pushed each other," they fell back onto a bed, and in arising, Keyes, allegedly inadvertently, placed her arm in a position that temporarily impeded respondent's breathing.

Respondent and Keyes additionally testified that they apologized to each other, then checked the children's bedrooms to ascertain whether they had heard the altercation. Respondent and Keys found Jordan asleep, but Sarah was awake and had overheard part of the altercation. According to respondent and Keys, both that evening and the next day, they assured Sarah that all was well between them and apologized to Sarah for the incident having occurred.

During the week after the altercation, respondent told Sayers that Keyes previously had assaulted her, and that Keyes apparently had control issues and tended to dominate respondent in their relationship. The testimony of respondent, and the several therapists to whom respondent spoke about her discussion with Sayers, consistently offered the explanation that respondent had falsely disparaged Keyes because she feared that if she did not express some awareness of domestic violence, she most certainly would lose the children permanently. Respondent averred at the hearing that she ultimately did not follow through with Sayers's suggestion that she obtain a personal protection order against Keyes because Keyes had never attacked her.

The various therapists who testified at the hearing offered their feelings and insights concerning the April 2007 altercation between respondent and Keyes, which the counselors agreed qualified as inappropriate behavior. Giordano disbelieved that the April 2007 altercation "was elevated to the point that the police should have been called, that somebody needed to get a PPO," and rejected the notion that the single altercation would significantly and adversely affect Sarah and Jordan. Dr. Jager testified to her opinions that the April 2007 altercation constituted an isolated incident because she had not "heard or seen anything that would lead me to believe otherwise from them," that respondent and Keyes understood the impropriety of the altercation,

and that the argument, which occurred while Sarah and Jordan were present but in bed, did not amount to abuse and neglect of the children. Foster recounted that during anger management sessions, Keyes expressed her understanding that the altercation was inappropriate, especially with the children present, that Keyes "definitely" accepted responsibility for her involvement in the fight, and that Keyes "was very remorseful, so much so to the point that she was worried about what—what this might mean for [respondent] getting the kids back."

Marta Hansen, who had regularly counseled Sarah for about two years and Jordan for approximately a year, testified that the April 2007 altercation had bothered Sarah, but mostly because it occasioned the second cessation of respondent's unsupervised visitation. Hansen denied that Jacob ever initiated discussion of any issues related to the April 2007 altercation.

Only Sayers testified that she believed respondent did not stand up to Keyes and that respondent seemed to behave differently when Keyes was not around. The FIT counselors, who spent two hours a week with respondent and Keyes over the course of many months, plainly occupied a better position from which to understand and opine regarding the dynamics of their relationship. Apart from Sayers's testimony, no evidence supported the notion that domestic violence existed in respondent's relationship with Keyes. The clinical social workers and family therapists who provided months of direct and intensive services to respondent and Keyes unanimously denied any concerns of ongoing domestic violence issues. Given the abundant testimony regarding the nurturing and supportive relationship between respondent and Keyes, and the undisputedly stressful and emotional circumstances under which their one physical altercation of record took place, we find no clear and convincing evidence that dependency or domestic violence issues remained for respondent at the time of the termination hearing.

C. Respondent's Parenting Ability as a Basis for Subsection (c)(i)

Lastly with respect to subsection (c)(i), we examine the extensive evidence of record relevant to the quality of respondent's and Keyes's general parenting abilities at the time of the termination hearing.

Dr. Daniel Zak, a psychiatrist, testified that he evaluated Sarah and Jordan and diagnosed each with a different form of attention deficit hyperactivity disorder. Dr. Zak recommended that Sarah and Jordan begin taking different prescription medications. Dr. Zak described meeting with respondent on several occasions because she "had some concerns about [Sarah's proposed medication] so I actually was able to meet with her a few times to help sort of answer questions that she had about the medication, its side effects, alternative treatments, risks, benefits, things like that." Dr. Zak recalled respondent as cooperative during their discussions, and that she ultimately supplied written authorizations to place both Sarah and Jordan on the prescription medications.

Hansen testified that she worked on parenting issues with respondent, Keyes, Sarah and Jordan between July 2006 and October 2006, when the oldest two children returned to respondent's custody. Initially, Hansen saw only Sarah in addition to respondent and Keyes, but at respondent's request, Hansen likewise began seeing Jordan. As Hansen recalled,

> Jordan is a difficult kid to parent, I think for foster parents, for [respondent] and Rachel and so the difficulty is how to be creative in parenting

him, but I also felt like they did a good job in seeking help and following recommendations and if that didn't work for them coming back and saying we tried this but it's not working so well.

* * *

. . . I see a lot of families in this situation and . . . I think [respondent] was more active in seeking help when there was [sic] practical issues that she was dealing with, especially with Jordan, she would bring him and say[], you know, I tried this that didn't work, what else should I do kind of thing, so it was active involvement.

In Hansen's opinion, Jordan's behavior improved during the period that he lived with respondent. Hansen also viewed respondent as very supportive of and loving toward Sarah, and successful in parenting Sarah, as well. Hansen added that respondent had no difficulty ensuring that Sarah and Jordan attended their weekly appointments with Hansen, that respondent cooperated with her, that Keyes also "came to every session," and that Keyes participated in seeking parenting assistance.

Giordano testified to her observations of the parenting received by Sarah and Jordan after they returned to respondent's custody in July 2006:

*Giordano*: . . . [W]hen they first came in . . . it was very hectic and chaotic, Jordan was all over the place, nobody was listening. Sarah was reacting pouty, angry, Jordan was throwing his toys, would be mad and throwing a tantrum if he had to go to bed, would bit[e], hit, kick and he was coming up to any stranger and wanting to engage them, kiss them on the face. . . . [S]o we had to really quickly try to help [respondent] and she was also taking different parenting classes, . . . she was just like oh, please help me, anybody, anybody got some ideas and very quickly, it was within I think, I know by September those issues were starting to resolve themselves, Sarah was not refusing to take showers and baths anymore, she was keeping her room straightened up, she was less disrespectful, she still did not want to do her dishes or her chores. She was . . . getting much more interactive and sharing her feelings. Also Jordan was going to bed, coming out giving people hugs and kisses, not throwing anything, talking to me about the letters and numbers that he was learning from mom and everything was quite settled. He would go to bed, there wouldn't be anymore noise from him and they seemed a lot happier. . . .

*Q*: Was [respondent] taking an active role in parenting her children or was it more Rachel taking the active role?

*Giordano*: Both of them were fairly active but [respondent] was more active. Initially they did have some disagreements and conflicts that were being voiced in front of the children and they were discussing, you know, how should we do this, who should eat when, where should they eat it, we need to be consistent. And here they are discussing this in front of these two kids and I said that's not appropriate, so they stopped doing that and within a short period of

> time, within three to four weeks I saw them, you know, really acting pretty, . . . co-parenting pretty well together and—but if it came right down to it, you know, Rachel was often working and [respondent] would be there and by herself and—and if it came down to a disagreement . . . [it] was [respondent] who's [sic] opinion was [sic] the parent and her decision ruled.

Giordano viewed respondent as "very patient with" the children, and as exhibiting "a lot of insight with the kids," specifically noting that respondent "does address when she has made a mistake that I need to correct this and it needs to stop." Giordano denied that anyone ever voiced to her any concerns about respondent's parenting during 2007. At least with respect to Sarah and Jordan, Giordano disbelieved that they would endure abuse or neglect in respondent's custody. Giordano concluded as follows:

> I can only attest, you know, kind of give an opinion with regards to how it was when there were two children. . . . [T]he kids improved in her care from when they had returned from the foster home, which I think was, you know, . . . something about what she did, she was the one who was there with them and nobody else was there with them and so I think that she was doing really really well, you know. I do believe that she's . . . doing better. . . .

Dr. Carolan, who observed respondent and all four children weekly through the FIT program between January 2006 and July 2006, began a summary of her parenting observations as follows:

> I thought that [respondent] was doing a lot of very appropriate things with her children. She—they obviously really cared a lot about her. They are very affectionate towards her, and she was responsive to them. She corrected behaviors that she thought were in need of correcting. Um, she noticed their moods. She noticed their different emotional problems in the session. She had very good contact. She made good contact. The children made good contact with her. . . . I thought she was doing a very good job of parenting those children, as I could observe in those sessions. And, when I talked with her about her ideas about parenting, they were very sound. Never did—she never raised her voice, she never made any threats. We have a lot of parents actually . . . in the FIT program who use threats as a way of controlling their children, and this is a red flag to us. I never saw any of that kind of behavior with [respondent]. It was always very gentle. It was always appealing to them, in an appropriate way, to try to make corrections in their behavior. She's very loving towards them. . . .
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> * * *
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> [Even on her own with all four children,] I thought she did very well. It's very overwhelming to have four children quite that young, and so there would be times when she couldn't quite attend to all four at the same time. But, often, [some of] those kids didn't need her attention, and so she would usually move her attention to the child that was the most in need of that attention as it came up. What I found was that these children played very nicely together, especially after they got used to the idea of being there. And, there was [sic] sessions in which a

> good half-hour the three older children would be playing a game together, building Legos. I—I was very impressed with the way they got along together, which spoke to me about good parenting, because one of the things that we see in children who have not been well-parented is that they're usually in a lot of conflict with each other, and I didn't see that in these children. They were getting along very nicely together. Sure, occasionally one would get, you know, upset and want something the other one had and certain normal things that children will exhibit, but I never saw any—there's no name calling, there was no conflict between them, there was no violence, there's no hitting, none of that sort of behavior, which we see quite often in children in our clinic.

Dr. Carolan then offered her opinion regarding respondent's capability to parent her four children:

> *Q*: Based on your observations of [respondent] during the time that you worked with the family, do you believe she's able to parent her children?
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> *Dr. Carolan*: Absolutely. I was actually shocked that it got to the termination. It really made no sense to me, whatsoever, and I feel that there's been some kind of misunderstanding or misrepresentation. I didn't see any evidence, and I have supervised thousands of family case—cases. I did not see any evidence that these children should be removed from this parent.

Bozek likewise began observing respondent and the four children at weekly FIT appointments, which respondent always attended. Bozek summarized her observations as follows:

> *Q*: How did [respondent] do during the times that you observed her without Rachel being present at sessions? How did she do with her kids?
>
> *Bozek*: She was very appropriate with the kids. She was able to balance each of their needs, which is difficult to do when you have four kids running around, but she was able to handle all of them very well and be very appropriate with them.
>
> *Q*: And, when Rachel joined the sessions, how was Rachel with the children?
>
> *Bozek*: Very appropriate. Um, did very well with them. I think in one of my case notes I noted that Rachel seemed to take the role of parenting, or role of parent, very well in terms of engaging with the children, being appropriate with them, activities. And, it just seemed like both [respondent] and Rachel really enjoyed being with the children.
>
> *Q*: When [respondent] and Rachel were together in the sessions, did [respondent] actively co-parent with Rachel?
>
> *Bozek*: Yes.

*Q*: Did you ever observe [respondent] to be more of a playmate with the children while Rachel did the bulk of the hard work of the parenting?

*Bozek*: No. I think it was split pretty evenly between the two of them.

Bozek also watched respondent and Keyes with Sarah and Jordan after they returned to respondent's custody.

> Well . . . it was much more natural, . . . it's very different when you're in a room with the kids versus at home, so they were able to, you know, attend to both kids in the same room; but if one would go and play, like Jordan would go and play in his own room, [respondent] and Rachel, both of them, not at the same time but, you know, would get up and check on Jordan. So it was good to see that they were monitoring what was going . . . on in the home if—even if they weren't all in the same room. . . .

Bozek twice observed respondent with all four children, and characterized as follows her handling of these situations and her ability to parent without Keyes's assistance:

> Good. Good. It's—I mean you have four kids running around, but she was able to manage all of them. . . . [W]e had two family sessions in which all four of the kids were home. . . . [A]nd it took place during—around dinnertime. . . . So, we were able to watch how [respondent] and Rachel were able to get dinner ready for the kids and have them all sit down and eat and kind of do the meal time routine.
>
> *Q*: Was Rachel always present when you met with [respondent] and the children?
>
> *Bozek*: No. There were times when Rachel was out getting food, so about half the sessions Rachel may not have been there. It was just [respondent].
>
> * * *
>
> *Q*: Was there a difference in [respondent's] parenting when Rachel was there, in terms of being able to manage the children?
>
> *Bozek*: I would—I don't think so.
>
> * * *
>
> She was able to manage all four of them on her own without Rachel.

Dr. Jager testified at length at the termination hearing about her weekly interactions with respondent, Rachel and the children, which began in July 2006.

> *Dr. Jager*: When I met with [respondent], with Sarah and Jordan, . . . the observations that I remember are, at one point, I went with [respondent] to go to pick up Sarah and Jordan from child care, and I remember being very impressed

with how she handled the transition. She went—she talked to the kids' teacher. Did they have a good day? Um, you know, greeted the children. There was another time that I had been there where [respondent and Keyes] were talking about Sarah at school. You know, they had some concerns about her readings. They were talking about ways to work with her on that. I know that they had written a letter so that Sarah could become a safety. They were thinking it would be a good responsibility for Sarah to take that on. . . . I can think of all kinds of things that—that they had done with the kids. Um, [respondent] showed a lot of, I think, pride in Jordan. Like she would tell us . . . Jordan tell them this, you know, tell them what you know, show them how you can count. Um, it was a very loving environment and also flexible, as well, where . . . the kids would go into their room, they'd show us things, . . . at times, if we had a conversation with just [respondent] and Rachel and myself and Katie [Bozek], sometimes the kids would go off and play, and that was okay. I mean, they were in the house. It wasn't like they were leaving. I recall also a time that Sarah had started playing with more of the kids in the neighborhood and [respondent] wanted to make sure that she knew who Sarah was going to go out and play with and that that was going well and that she knew exactly where Sarah was.

* * *

. . . I don't think I've ever seen [respondent] handle her anger inappropriately in front of me. . . . I've seen her do some—some really excellent things with her children. I've seen her redirect them. I've seen her be present with them. I've seen her show them empathy. . . .

Dr. Jager denied ever noticing any inappropriate behaviors that respondent directed at Sarah or Jordan, and described respondent's limit setting abilities as follows:

*Dr Jager*: I observed her talking to Sarah about, you know, only going to the playground. I observed her talking to Sarah about being nice to other children. I observed her, at times, like limiting what Sarah would eat in a way like, okay, you've had enough. Dinner is . . . coming up. Or you've had enough chips. Let's get something else. Or, turn off the TV; it's time to be in counseling. So, I mean there were . . . a number of limits that I saw her set with Sarah.

*Q*: How did [respondent] do during the two family sessions that you saw with all four kids?

*Dr. Jager*: She did very well. The . . . family sessions took place right about dinnertime, and so [respondent] . . . . had gone to pick up Sarah and Jordan from day care. The transporter was bringing Jacob and Tyler, and then Rachel had gone to pick up some dinner. And, what they had done during one of the sessions is put together kind of a picnic with the kids where we all sat together on the floor. . . . I mean, it was very natural. It was—it was very much a family dinner. They had kind of set it out with like a picnic. The kids were having a good time, they were listening. Both [respondent] and Rachel were working together getting the kids set up with what they had to eat. It went very well.

* * *

*Q*: How did [respondent] do when she was parenting the children on her own, without Rachel's help?

*Dr. Jager*: She did well. . . . I think like any . . . parenting relationship, when one of the parents isn't there, the other parent, you know, will—will set the limits or will take care of what's going on or will talk about to us as therapists. She would tell us what the kids were doing that day. When Rachel was there, it was balanced. . . . [F]or instance, in that family dinner, you know, Rachel would go . . . get the ketchup, [respondent] would take out Tyler's food and set it out and cut it up so that he could eat it. . . . [I]t was very balanced. I often saw them sharing roles.

*Q*: Did you ever observe them disagree in front of the children as to discipline or how something should be handled?

*Dr. Jager*: Not that I can recall.

In Dr. Jager's estimation, the DHS should not have removed Sarah and Jordan from respondent's home, especially because "Sarah and Jordan were . . . really starting to settle into the home. . . . [I]n my opinion, there was more harm to the children by being removed from the home that quickly." Dr. Jager further opined that respondent and Keyes

> [h]andled [the removal] very well. It was a very difficult situation. . . . I was impressed with how well they put some of their own grief and sadness and reactivity aside and really attended to the children. They helped them take things that would be comforting to them. They talked about how they were gonna keep working. They really wanted Sarah and Jordan to know that this is something that they weren't gonna let go, that they were gonna . . . keep working to get the kids back home, that things were gonna be okay. I remember that we all really struggled with trying to tell Jordan what was happening. It was very hard for him to understand. Sarah knew more of what was happening. And, both [respondent] and Rachel, I think, were really present with the kids in what they were going through.

Andrea Gilbert, the case worker between November 2005 and March 2006, confirmed that during this period respondent "was learning a lot of new coping skills. She was also learning parenting skills. [S]he was learning activities to occupy the[] [children's] time and also work with their anger issues or any of their issues. . . . [S]he was a very active participant in her services and was making progress with it." During supervised visits, respondent took the children "clothes and toys," "snacks, activities to play with . . . during the visit." Gilbert reported that the children interacted with respondent

> quite well. They were . . . always very engaged with her. Sarah took a little bit of time to start adjusting to these visits at the agency. . . . [B]ut, . . . they always got along very well. There were difficulties with the children running in and out of the room, . . . but for the most part, they seemed like appropriate visits.

Gilbert also observed a "[v]ery strong bond" between respondent and the children.[6]

Apart from Sayers's general opinion that respondent failed to demonstrate that she possessed parenting skills sufficient to enable her to care for all four of the children, Sayers testified that other specific, parenting-related concerns included the facts that (1) at supervised visitations in January and February 2007, respondent did not prevent the children from hitting each other, wiped spit on Jacob's face after he spit on her, allowed another child to climb on furniture, and left Tyler unattended in the visitation room, (2) respondent and Keyes left the children in the custody of an unapproved babysitter, and (3) respondent had arrived late for two in-home service appointments, five minutes late for one, and 10 minutes late for the other. On cross-examination, however, Sayers acknowledged that she could not say for certain whether she had witnessed the January 2007 and February 2007 visits. Respondent denied or did not recall having wiped spit on Jacob, although she did recall leaving him in the visitation room, under the supervision of the DHS visitation supervisor, while she took the other children to the nearby restroom. With respect to the unapproved babysitter episode, the relevant termination hearing testimony agreed that respondent and Keyes on one occasion had left the children in the care of

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[6] The guardian ad litem similarly addressed respondent's parenting abilities during her closing argument at the termination hearing.

> I'm torn. I'll be very honest with this Court; . . . because I think that I have seen the mother parent these children on approximately 10 different occasions, where I have gone to the agency, I have watched parenting time; I have been to the home; I have seen her interact with the kids in a home setting, and she does very well. I have seen her with Rachel; I have seen her without Rachel, and every parenting time that I have seen myself, she has done very well. I understand that everybody has, you know, issues. There are four children, but I have not seen anything in my viewings that concerns me about the mother's parenting skills.
>
> * * *
>
> And something that the mother testified to really struck me and shows me that I think she has a lot of insight and really, truly is thinking what is important for the children. She said that—that she would feel not as concerned about Jacob and Tyler, because they have been in the home of [their foster family] for as long as they have. Now, to me, she—what she also said was that she doesn't know what's in their best interests because they have been there so long; would taking them out hurt them more than leaving them there? For her to question that, I think, shows that she has a lot of insight, and I think that the Court just needs to take that into consideration, as well as the fact that it is true Sarah and Jordan are not in a preadoptive placement at this point in time; so, no matter what happens in their lives, they're going to experience at least one more move in their lives.

respondent's sister, Kerrie, whom the DHS previously had approved as a visitation supervisor, and Kerrie's husband, who apparently did not receive DHS approval.

Even accepting Sayers's interpretations of two or three of respondent's 2007 supervised visits and the validity of her other concerns, her testimony plainly does not rise to the level of clear and convincing evidence that respondent lacked parenting skills—especially given the overwhelming testimony by experts and others to the contrary that respondent consistently and over long periods of time demonstrated love for the children, parenting insight, the willingness to engage in a multitude of parenting-related services, and the capacity to learn from these services. In our view, the record evidence clearly and convincingly demonstrated that respondent substantially benefited from the services provided to her, and with the guidance of therapists and other professionals, developed maturity, remarkable insight, and a willingness to accept responsibility for her previous shortcomings.

Respondent became pregnant for the first time at age 13, and had four children when she celebrated her twenty-first birthday. Before DHS intervention, respondent struggled with drugs, endured emotional abuse committed by the children's father, and lacked parenting abilities. Isolated setbacks occurred on respondent's path to substantial and virtually complete rectification of those conditions. However, we reject the circuit court's conclusion that those setbacks, or the court's primarily speculative concerns that respondent continues to have "dependency issues" or occasional difficulty in "controlling" four young children, qualify her as unfit.

In summary, because petitioner failed to prove with clear and convincing evidence that any of the conditions leading to the June 2005 adjudication continued to exist at the time of the termination hearing, we conclude that the circuit court clearly erred in finding termination warranted pursuant to subsection (c)(i).

## IV. Subsections (g) and (j)

Petitioner also failed to clearly and convincingly demonstrate that no reasonable expectation exists that respondent "will be able to provide proper care and custody within a reasonable time considering the child[ren]'s ages," subsection (g), or the existence of "a reasonable likelihood, based on the conduct or capacity of . . . [respondent], that the child[ren] will be harmed if . . . returned to the home of the parent," subsection (j).

The record here demonstrates that respondent substantially complied with her court-ordered treatment plan. Respondent had full-time employment at Cypress Home Health Care for more than two years. Respondent had maintained a stable and appropriate three-bedroom apartment, for which she paid $692 a month and received § 8 assistance of $150 a month.[7]

[7] Sayers questioned the propriety of respondent's § 8 housing application, specifically the fact that she included the children on her application when they did not live there. Respondent testified, however, that she placed the children on the application on the advice of her counsel because the permanency planning goal was reunification. Respondent explained that when the goal changed to termination of her parental rights, she relinquished the § 8 assistance for her
(continued…)

Respondent had attended well over 300 drug screens, had only the two isolated positive screens in 2006, and twice completed substance abuse treatment, demonstrating no imminent relapse or other ongoing substance abuse problem. As reflected by the lengthy nature of this opinion, respondent and Keyes regularly and actively participated in many forms of counseling and therapy. Respondent and Keyes have a stable relationship, devoid of substantiated domestic violence difficulties. And the record contains overwhelming evidence that respondent loves and has strong bonds with the children, and that she possesses sufficient insight and ability to care for them. A "parent's compliance with the parent-agency agreement is evidence of her ability to provide proper care and custody." *In re JK*, *supra* at 214.

We acknowledge and concur in the unanimous opinion testimony that respondent's four children desperately need permanency in their lives. But in light of the overwhelming evidence of respondent's treatment plan compliance and ability to parent, we reject the notion that the children's strong need for permanency and stability, standing alone, warrants the termination of respondent's parental rights pursuant to any of the asserted statutory grounds.

We reverse the circuit court's termination order and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Elizabeth L. Gleicher
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra

(…continued)

three children and maintained the apartment by paying for most of the monthly rental amount herself.